

STATE OF INDIANA

INDIANA UTILITY REGULATORY COMMISSION

PETITION OF INDIANAPOLIS POWER &)
LIGHT COMPANY PURSUANT TO IND.)
CODE § 8-1-39-9 FOR: (1) APPROVAL OF AN)
ADJUSTMENT TO ITS ELECTRIC SERVICE)
RATES THROUGH ITS TRANSMISSION,)
DISTRIBUTION, AND STORAGE SYSTEM) CAUSE NO. 45264 TDSIC 1
IMPROVEMENT CHARGE (“TDSIC”) RATE)
SCHEDULE, STANDARD CONTRACT RIDER)
NO. 3; AND (2) AUTHORITY TO DEFER 20%)
OF THE APPROVED CAPITAL)
EXPENDITURES AND TDSIC COSTS FOR)
RECOVERY IN PETITIONER’S NEXT)
GENERAL RATE CASE.)

**PETITIONER'S UNOPPOSED THIRD MOTION FOR PROTECTION AND
NONDISCLOSURE OF CONFIDENTIAL AND PROPRIETARY INFORMATION**

Indianapolis Power & Light Company (“Petitioner”, “IPL” or “Company”) pursuant to 170 IAC 1-1.1-4, Ind. Code § 5-14-3, and Ind. Code § 8-1-2-29, respectfully requests that the Indiana Utility Regulatory Commission (“Commission”) enter a Protective Order prohibiting dissemination outside of the Commission and adopting safeguards for the handling of certain documents containing information that is confidential, proprietary, competitively-sensitive and trade secret. In support of this unopposed motion, IPL represents the following:

1. IPL has filed a Verified Petition for: (1) approval of an adjustment to its electric service rates through a Transmission, Distribution, and Storage System Improvement Charge (“TDSIC”) Rate Schedule, Standard Contract Rider No. 3 (“TDSIC Rider”) to effectuate the timely recovery of 80% of capital expenditures and TDSIC costs in connection with Petitioner’s eligible transmission, distribution, and storage system improvements; and (2) authority to defer, as a regulatory asset, the remaining 20% of eligible and approved capital expenditures and TDSIC costs, with carrying costs, for recovery in Petitioner’s next general rate case.

2. The evidentiary hearing in this Cause is scheduled for September 11, 2020. In lieu of cross-examination of the parties' witnesses, the parties have agreed to the stipulation into the record of certain documents. A portion of the stipulated materials contains information identified as confidential, proprietary, competitively-sensitive and/or trade secret information by IPL (the "Confidential Information"). More specifically, the Confidential Information that is the subject of this unopposed Motion is contained in confidential attachments to IPL's responses to City of Indianapolis Data Request Set 4. As stated below, IPL proposes to submit to the Commission under seal an unredacted copy of the confidential attachments upon the Commission making a preliminary determination that they are confidential and not subject to public disclosure and access.

3. The Confidential Information may also be discussed in the evidence, pleadings and other submissions to be made in this Cause. A Commission protective order will allow IPL to safely file the Confidential Information with the Commission.

4. As explained in the affidavit of Chad Rogers, attached hereto as Exhibit A, the Confidential Information to be submitted includes the following forward-looking financial information: (a) a list of forecasted debt issuances for 2020 through 2026 and forecasted long-term debt cost, contained in City DR 4-12 Confidential Attachment 1; and (b) forecasted IPL dividends for 2020, provided in City DR 4-22 Confidential Attachment 1.

5. The Confidential Information: (i) is such that it may derive actual and potential independent economic value from being neither generally known to, nor readily ascertainable by proper means by, other persons who could obtain economic value from its disclosure or use; and (ii) is the subject of efforts that are reasonable under the circumstances to maintain its secrecy.

Further, Regulation FD of the Securities and Exchange Commission limits the extent to which material nonpublic financial information may be disclosed.

6. As explained in Mr. Rogers' Affidavit, disclosure of the Confidential Information could cause economic harm to the AES Corporation and its subsidiaries, including IPL, by allowing third parties to obtain information about internal strategic financial planning processes, including strategies with respect to key financial performance metrics. Disclosure of the Confidential Information would be of considerable economic value to the parties with whom AES Corporation and its subsidiaries transact business or the parties with whom they compete. This would compromise IPL's negotiating power and could ultimately have a negative impact on IPL's customers. Thus, the Confidential Information derives actual and potential independent economic value from being neither generally known to, nor readily ascertainable by proper means by, other persons who could obtain economic value from its disclosure or use.

7. The Confidential Information which is the subject of this Motion is similar to confidential, proprietary, competitively-sensitive and/or trade secret information previously found to be exempt from public disclosure by the Commission. *See, e.g., Re Indianapolis Power & Light Co.*, Cause No. 45029, Docket Entry dated July 6, 2018 (forward-looking, material non-public financial information exempt from public disclosure), affirmed by Order dated October 31, 2018; *Re Wabash Valley Power Assoc., Inc.*, Cause No. 45063, Docket Entry dated April 11, 2018 (confidential forecasted financial information exempt from public disclosure), affirmed by Order dated July 25, 2018; *Re Wabash Valley Power Assoc., Inc.*, Cause No. 44928, Docket Entry dated May 4, 2017 (confidential forecasted financial information exempt from public disclosure), affirmed by Order dated July 12, 2017.

8. Courts in Indiana look to the Indiana Uniform Trade Secret Act, Ind. Code § 24-2-3-2, for guidance as to whether information is trade secret or proprietary business interest entitled to protection from disclosure. *Star Scientific, Inc. v. Carter*, 204 F.R.D. 410, 414 (S.D. Ind. 2001). The Confidential Information falls within the purview of the Indiana Uniform Trade Secret Act. The Confidential Information is not publicly available and (i) is such that it may derive actual and potential independent economic value from being neither generally known to, nor readily ascertainable by proper means by, other persons who could obtain economic value from its disclosure or use; and (ii) is the subject of efforts that are reasonable under the circumstances to maintain its secrecy. In *Star Scientific*, the court recognizes that a protectable trade secret includes any information or compilation which is used in one's business and which gives the business an opportunity to obtain an advantage over competitors that do not have the information. *Star Scientific, Inc. v. Carter*, 204 F.R.D. at 414-415. Thus, the Confidential Information is a protectable trade secret consistent with *Star Scientific*.

9. The Confidential Information is not available in the public domain and IPL has taken steps to protect this information from public disclosure. IPL has taken steps to limit access to the proprietary and confidential information to those employees who need to know the information. The IPL files containing the proprietary and confidential information are maintained separately from their general records and access to those files is restricted.

10. Based upon the above description of material for which IPL seeks protection and the attached affidavit, IPL requests the Commission enter a preliminary determination that the Confidential Information appears to be confidential and trade secret within the meaning of Ind. Code § 5-14-3-4(a) as defined by Ind. Code § 24-2-3-2, for the limited purpose of allowing IPL to safely submit or otherwise make available the Confidential Information under seal for an *in camera*

inspection by the presiding Administrative Law Judge and Commission for a final determination of the appropriateness of IPL's request for protection.

11. Once a preliminary determination is made that the Confidential Information is exempt from public disclosure, IPL will submit the Confidential Information to the Presiding Administrative Law Judge using the Commission's Online Services Portal. This submission will be made subject to and contingent upon the right to retrieve the Confidential Information before it can be disclosed to any members of the public should the Commission upon a final determination find that the material submitted under seal should not be protected.

12. IPL requests that the Commission protect the confidential and proprietary information from disclosure and limit access to those Commission employees with a need to review the confidential and proprietary information. Further, IPL requests that the Commission not disclose the information to persons outside the Commission unless the person has entered into an appropriate protective agreement with IPL.

13. IPL will provide the Confidential Information to the OUCC and Intervenors pursuant to non-disclosure agreements between IPL and the OUCC and Intervenors. If necessary, IPL will request that the Commission enter a protective order safeguarding the dissemination of the Confidential Information.

14. Counsel for IPL has conferred with counsel for the other parties in this proceeding and is authorized to represent that the other parties do not object to the relief sought in this Motion.

WHEREFORE, IPL respectfully requests that the Commission make and enter appropriate orders in this Cause:

- (i) Finding the Confidential Information to be preliminarily confidential for the limited purpose of allowing IPL to safely file the Confidential Information with the Commission under seal;
- (ii) Thereafter, make a final determination that the Confidential Information is exempt from public disclosure under Ind. Code § 8-1-2-29 and § 5-14-3-4;
- (iii) Implementing procedures to insure that the Confidential Information is appropriately secured and made available only to the appropriate Commission members and employees on a need-to-know basis, and who are under an obligation not to disclose such confidential information to any third party; and
- (iv) Granting to IPL such other relief as may be appropriate.

Dated this 9th day of September, 2020.

Respectfully submitted,



Teresa Morton Nyhart (Atty. No. 14044-49)
Jeffrey M. Peabody (Atty. No. 28000-53)
BARNES & THORNBURG LLP
11 South Meridian Street
Indianapolis, Indiana 46204
Nyhart Phone: (317) 231-7716
Peabody Phone: (317) 231-6465
Fax: (317) 231-7433
Nyhart Email: tnyhart@btlaw.com
Peabody Email: jpeabody@btlaw.com

ATTORNEYS FOR PETITIONER INDIANAPOLIS
POWER & LIGHT COMPANY


CERTIFICATE OF SERVICE

The undersigned hereby certifies that a copy of the foregoing was served this 9th day of September, 2020, by email transmission, hand delivery or United States Mail, first class, postage prepaid to:

Jeffrey Reed
Office of Utility Consumer Counselor
115 W. Washington Street, Suite 1500 South
Indianapolis, Indiana 46204
jreed@oucc.in.gov
infoimgt@oucc.in.gov

Anne E. Becker
Bette J. Dodd
Lewis & Kappes, P.C.
One American Square, Ste. 2500
Indianapolis, Indiana 46282
ABecker@Lewis-Kappes.com
BDodd@Lewis-Kappes.com

Todd A. Richardson
Joseph P. Rompala
LEWIS KAPPES, P.C.
One American Square, Suite 2500
Indianapolis, Indiana 46282-0003
TRichardson@Lewis-Kappes.com
JRompala@Lewis-Kappes.com



Jeffrey M. Peabody

Teresa Morton Nyhart (Atty. No. 14044-49)
Jeffrey M. Peabody (Atty. No. 28000-53)
BARNES & THORNBURG LLP
11 South Meridian Street
Indianapolis, Indiana 46204
Nyhart Phone: (317) 231-7716
Peabody Phone: (317) 231-6465
Fax: (317) 231-7433
Nyhart Email: tnyhart@btlaw.com
Peabody Email: jpeabody@btlaw.com

ATTORNEYS FOR PETITIONER
INDIANAPOLIS POWER & LIGHT COMPANY

**Rogers Affidavit - Forecasted Financial Information18101689.1.doc**

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E-Signature Summary**E-Signature 1: Chad A. Rogers (CAR)**

September 09, 2020 08:02:42 -8:00 [A7B34269E6D5] [34.69.162.18]
chad.rogers@aes.com (Principal) (Personally Known)

E-Signature Notary: Shanna Bowman (SB)

September 09, 2020 08:02:42 -8:00 [D72E7F37DAB9] [199.247.47.133]
shanna.bowman@aes.com
I, Shanna Bowman, did witness the participants named above electronically sign this document.



AFFIDAVIT OF CHAD A. ROGERS

Chad A. Rogers, upon his oath, deposes and states:

1. I am a Senior Program Manager in Regulatory Affairs for Indianapolis Power & Light Company (“IPL” or the “Company”). In that capacity, I provide financial, technical and regulatory analysis and manage various regulatory projects and filings.

2. I acknowledge that I am of requisite age and capacity to testify to the matters stated herein. I have personal knowledge of the confidential, proprietary, competitively-sensitive and trade secret nature of the Confidential Information addressed herein through direct contact with this information and through my investigation with other IPL employees who work directly with the Confidential Information. I have personal knowledge of efforts taken by IPL to maintain the secrecy of the Confidential Information through direct contact with these efforts and through my investigation of these efforts with other employees who work directly with these procedures.

Description of the Confidential Information for Which Protection is Sought

3. IPL is requesting that certain confidential information to be submitted in this Cause be exempted from public disclosure as confidential, proprietary, competitively sensitive, material non-public and trade secret information (the “Confidential Information”).

4. More specifically, the Confidential Information which is the subject of this affidavit consists of: (a) a list of forecasted debt issuances for 2020 through 2026 and forecasted long-term debt costs, contained in City DR 4-12 Confidential Attachment 1; and (b) forecasted IPL dividends for 2020, provided in City DR 4-22 Confidential Attachment 1. The Confidential Information includes forward-looking financial information regarding IPL’s financial position and expected future debt issuances and debt costs. This Confidential Information may also be used in other filings IPL or other parties will make in this Cause. IPL proposes that it submit an

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unredacted version of the attachments containing the Confidential Information and other filings (if any) that include the Confidential Information once a protective order is entered.

**The Information Contained in Confidential Information
Derives Independent Economic Value By
Reason of the Fact that it is Not Publicly Available**

5. The Confidential Information is proprietary, competitively sensitive and trade secret information of IPL. The Confidential Information is not readily available in the public domain and IPL takes steps to protect this information from public disclosure. Further, Regulation FD of the Securities and Exchange Commission limits the extent to which material nonpublic information may be disclosed. The disclosure of the Confidential Information could cause economic harm to AES Corporation and its subsidiaries, including IPL, by allowing third parties to obtain information about internal strategic financial planning processes, including strategies with respect to key financial performance metrics. Disclosure of the Confidential Information would be of considerable economic value to the parties with whom AES Corporation and its subsidiaries transact business or the parties with whom they compete. This would compromise IPL's negotiating power and could ultimately have a negative impact on IPL's customers. The Confidential Information therefore constitutes a trade secret under Indiana law and is entitled to protection from disclosure by the Commission.

**The Information is Not Generally Known, Readily Ascertainable
by Proper Means by Other Persons Who Can
Obtain Economic Value from its Disclosure or Use**

6. The Confidential Information is not available or ascertainable by other parties through normal or proper means. No reasonable amount of independent research could yield this information to other parties.



**The Information is the Subject of Efforts Reasonable
Under The Circumstances to Maintain Its Secrecy**

7. The Confidential Information has been the subject of efforts that are reasonable under the circumstances to maintain its secrecy. IPL restricts the access of information to only those employees, officers and representatives of IPL who have a need to know about such information due to their job and management responsibilities. IPL limits public access to buildings housing the Confidential Information by use of security guards. IPL's files containing the Confidential Information are maintained separately from IPL's general records and access to those files is restricted. Within IPL, access to this information has been and will continue to be disclosed only to those employees, officers and representatives of IPL who have a need to know about such information due to their job and management responsibilities. Outside IPL, this information is only provided to certain persons who have a legitimate need to review the information and who sign a confidentiality agreement.

Further the Affiant sayeth not.

09/09/2020

Dated: _____

Chad A. Rogers

Signed on 2020/09/09 08:02:42 -8:00

Chad A. Rogers



STATE OF OHIO)
)
COUNTY OF MONTGOMERY) SS:

Before me, the undersigned, a Notary Public in and for said County and State, appeared Chad A. Rogers, who having been duly sworn upon his oath, attested that the foregoing statements are true to the best of his knowledge, information and belief.

WITNESS my hand and seal this 09/09/2020 _____.



Shanna Bowman
Signed on 2020/09/09 08:02:42 -8:00

Signature, Notary Public

